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## **SECTION 400.00-ACQUISITIONS OF RAILROAD PROPERTY RIGHTS**

### **SECTION 405.00-INTRODUCTION TO ACQUIRING RAILROAD PROPERTY RIGHTS**

Railroad Companies operating in Idaho acquired property rights through various means. Some of these were grants from the United States government, purchased property, obtained easements, and procured property from mergers with other Railroad Companies. Railroad property is classified as either operating or non-operating property.

Operating railroad property is the transportation corridor for railroad mainline tracks, passing tracks, sidings, yards, and spur lines. The presence of a railroad track is not necessary to classify railroad property as operating property.

Non-operating railroad property is any other railroad property that is not designated as operating property. The procedure for acquiring non-operating railroad property is the same as private property acquisitions described in the Design and R/W Manuals.

The general procedure for acquiring property rights for operating railroad property is described by this guide. Specific procedures differ between individual Railroad Companies. Some Railroad Companies, like Union Pacific Railroad Company, handle property acquisition activities within the company at an office location outside of Idaho. Other Railroad Companies like The Burlington Northern and Santa Fe Railway, contract with other property management companies located outside of Idaho to handle their acquisitions activities. The time frames to acquire railroad property vary according to the type of property right and the Railroad Company involved. Property rights issued by Railroad Companies for operating railroad property do not authorize the recipient to issue property rights to another party (e.g. a utility company).

### **SECTION 410.00-ENCROACHMENTS ONTO RAILROAD PROPERTY**

Encroachment onto railroad property includes any work at the surface of the ground, above the ground (aerial), or below the ground (underground). Work includes encroachment by personnel (e.g. land surveying, field reviews of crossings, crossing incident investigations, etc.); encroachment by personnel and equipment (e.g. soil investigation, roadway signing, etc.); and encroachment by personnel, equipment, and materials for construction (e.g. construction of roads, roadway structure, communication cable, or piping for water, etc.).

Encroachments onto railroad property usually consist of either one or a combination of the following situations:

- Longitudinal and not crossing existing railroad track(s).
- Perpendicular or skewed crossing of existing railroad track(s) with a grade separation structure under or over the railroad track(s).
- Perpendicular or skewed crossing of existing railroad track(s) with an at-grade road crossing.

Longitudinal encroachments are not allowed within a specified distance of a railroad track because of operational safety policies of each Railroad Company. This distance is typically 50 feet, but may vary for special conditions and by different Railroad Companies.

Encroachments are defined as temporary (limited by time, which usually means up to a few years) or permanent (no time limitations).

## SECTION 415.00—SELECTING THE TYPE OF RAILROAD PROPERTY RIGHTS

The District and their consultant or the LPA and their consultant select the type of property right requested from the Railroad Company.

Railroad Companies issue a permit, an easement (also known as a right-of-entry), or a lease for an encroachment instead of allowing the purchase of the property. Permits are issued for temporary encroachments. Easements are issued for temporary and permanent encroachments. Leases are issued for temporary and permanent encroachments in situations when the need for the encroachment is periodically reviewed.

A permit is recommended for an encroachment during project design for land surveying or materials investigation; or during project construction for installation of construction monitoring equipment (e.g. seismic readings during blasting operations). If several permits are required for encroachments in an area where railroad property rights are required for project construction, consider obtaining an easement instead of a permit.

An easement is recommended for encroachment of project design elements. Temporary easements are recommended for encroachments of project design elements not requiring future access or maintenance (e.g. access road for construction or slope flattening). Permanent easements are recommended for encroachments of project design elements requiring future access or maintenance (e.g. roads, structures, or drainage ditches). Leases are recommended for situations when it is known that encroachments of project design elements will be removed in the future (e.g. realignment of a road or access road to material source).

## SECTION 420.00—OBTAINING PERMITS

The permit process is explained by individual Railroad Companies on their web sites (see [Appendix B](#) for a listing of web sites). The general procedure is:

1. Define the permit area.
2. Complete the railroad permit application form; usually found at the Railroad Company's web site.
3. Submit permit application form, including required exhibits or other information, with a one-time payment amount to the Railroad Company.
4. Railroad Company either returns an approved permit or denies permit by letter along with returning application form and payment amount.

The application and payment process for obtaining railroad permits are the responsibility of the District and their consultant or the LPA and their consultant. If requested, the Utility/Railroad Engineer will assist with coordinating the activities for obtaining a permit. **The permit process can take a few days to several months to be completed by a Railroad Company.** Railroad Company may “speed up” the permit process if an additional fee (sometimes called a rush fee) is paid. Usually payment of this additional fee results in minimal time savings and is therefore not recommended.

Some permits require the permittee to perform specific actions, assume various liabilities, and/or provide specific liability insurance (insurance might be available from the Railroad Company).

The terms of a permit usually specifies a specific limit of time or date after which the permit expires.

Generally encroachment onto railroad property for non-ground disturbing activities, like surveying, is granted by a no-cost permit issued by the Railroad Company.

Permit information is not shown on the project plans.

## SECTION 425.00—OBTAINING EASEMENTS

Individual Railroad Companies may have other specific requirements, but the general procedure for obtaining an easement from a Railroad Company is:

1. Define easement area.
2. Prepare easement document.
3. Determine and negotiate payment amount for easement area including fees, property values, document preparation, and/or other costs.
4. Execute easement document and make payment for easement area.
5. Record easement document.

The District and their consultant provide appropriate information described in the following subsections to the Utility/Railroad Engineer who coordinates for ITD to obtain an easement.

The LPA and their consultant may either obtain an easement directly from the Railroad Company or request through the District the services of the Utility/Railroad Engineer. **Each LPA needs to be aware that ITD may not financially or contractually participate in all terms of an easement document negotiated by the LPA if it is not reviewed and agreed upon by ITD prior to execution of the easement document.**

Some easements require the permittee to perform specific actions, assume various liabilities, and/or provide specific liability insurance (insurance might be available from the Railroad Company).

**NOTE: Obtaining a railroad easement can take several months to a year; therefore the project development schedule should be adjusted accordingly.**

**425.01 Define Easement Area.** The District assigns a parcel & parcel identification number and determines whether the easement is to be temporary or permanent. Usually the controlling factor in this determination is whether or not there will be a future or continual need to access the easement area for maintenance purposes. Railroad Companies prefer easements be defined parallel and/or perpendicular to railroad property lines. Easement information is shown on the project plans including Right-of-way Plans. The District provides the appropriate plan information including legal description, when required, to the Utility/Railroad Engineer.

A temporary easement area is shown on a plan view with adequate dimensioning to establish location and includes railroad and roadway Right-of-way, railroad and roadway stationing, acreage amount of easement, DOT Crossing number and hatching to designate the easement area. The plan view also includes property location information of north arrow, township, range, section and section subdivision.

A permanent easement area is described by a written legal description by metes and bounds of bearings, distances, and property points. The written legal description is based upon information obtained from land surveying, as explained by the [Design Manual Section 337.00](#), and is signed & sealed by a Land Surveyor. A permanent easement area is shown on a plan view with property location information of north arrow, township, range, section, section subdivision; dimensions including bearings and distances from legal description; railroad and roadway Right-of-way; railroad mileposts of easement limits; roadway stationing with offset distances of easement limits; centerline intersection of roadway and

railroad with roadway stationing & milepost and railroad milepost; DOT Crossing number; acreage of easement; and hatching to designate the easement area.

It is recommended that the color black be utilized on the plan view for lines, hatching, and other information for railroad easements. If other colors are utilized some information may become illegible during reproduction of plan view of the easement.

When an easement is a combination of an existing easement and/or existing public rights (e.g. public road crossing) the total easement acreage is to show acreage of new easement and acreage of existing easement and/or existing public rights. If no recorded document is found to establish the Right-of-way width of an existing public road crossing railroad property, prescriptive rights can be claimed in accordance with Idaho Code 5-203 for a width equal to the limit of slope of the existing road. A minimum prescriptive right width of 50 feet can be claimed in accordance with Idaho Code 40-605.

**425.02 Preparation of an Easement Document.** An easement document is prepared by either the Utility/Railroad Engineer or the Railroad Company that is acceptable to both parties. The easement document specifies the parties involved, terms for use of the easement, payments by whom, and termination of the easement either by a date or condition (e.g. easement will terminate when no longer used for roadway purposes). All easement documents require approval by ITD Legal Counsel. If the document is to be recorded, such as a permanent easement, the signature page of the document requires the statement and signature of a notary for each party of the agreement.

The Utility/Railroad Engineer has a collection of previously executed easement documents, which are used as the basis for writing new easement documents that are acceptable to individual Railroad Companies. Plans and legal descriptions provided by the District are used as exhibits that are attached and included as a portion of the easement document.

**425.03 Determination of Payment Amount for Easement.** Individual Railroad Companies differ in regard to fees, property values, document preparation cost, cost for impacts to railroad facilities, or other costs that are charged for granting an easement. The Utility/Railroad Engineer is familiar with costs normally requested by a specific Railroad Company. All fees and costs, except property value, requested by a Railroad Company are reviewed by the Utility/Railroad Engineer who may negotiate the prices.

Property value of the easement is estimated by the District based on past purchase prices and current advertised prices of properties in the area modified by various factors like type of easement, length of time, etc. If estimated property value of the easement is:

- \$10,000 or less, the District may request the appraisal requirement be waived by Headquarters Right-of-Way in accordance with Idaho Code 54-4105(5). If the appraisal requirement is waived, the District determines property value by an ITD-1466 Property Compensation Estimate. The ITD-1466 with supporting documentation is provided to Headquarters Right-of-Way. Headquarters Right-of-Way reviews and concurs with the information before forwarding it on to the Utility/Railroad Engineer.
- More than \$10,000 an appraisal is required. The District makes a written request for an appraisal to determined property value to Headquarters Right-of-Way including plan sheet(s) and, if appropriate, a legal description. **The appraisal process takes several months to complete. The appraisal process cannot be completed until approval of the environmental document for projects using federal-aid funds.** Headquarters Right-of-Way returns copies of appraisal to the District and Utility/Railroad Engineer.

The Utility/Railroad Engineer modifies the property value provided by Headquarters Right-of-Way in accordance with the following situations:

- Permanent or temporary easement for a new or existing at-grade road crossing will have no payment for property value based upon a March 1, 1897, U.S. Supreme Court ruling.
- Permanent easement for a new grade separation structure over the railroad track(s) will be paid at 75% of property value for areas occupied by abutment, pier, retaining wall, or other structures. A 50% property value will be paid for the clearance area under the structure.
- Permanent easement for a new grade separation structure under the railroad track(s) will be paid base on appraisal of damage caused by limitation to railroad right-of-way.
- Permanent or temporary easement under an existing railroad structure will have no property value paid.
- Permanent easement not crossing existing railroad track(s) will be paid at 80% of property value.
- Temporary easement not crossing existing railroad track(s) will be paid at 10% of property value.

The Utility/Railroad Engineer offers a price for the easement that includes all fees, property value, and other costs to the Railroad Company unless the Railroad Company is willing to provide a no-cost easement. If the Railroad Company accepts the price offered then the process continues to the next step of the process.

If the Railroad Company rejects the price offered, the Utility/Railroad Engineer may negotiate a new price or request Headquarters Right-of-Way to negotiate a settlement of price. **Negotiations may take several months.** When Headquarters Right-of-Way negotiates a settlement of price with a Railroad Company, the Utility/Railroad Engineer is informed of the price after negotiations are completed.

**425.04 Execution of Easement Document and Payment.** The price for all fees and costs, including property value, negotiated with the Railroad Company are stated in the easement document. All parties sign the easement document, including notarization of signatures if applicable. The price stated in the easement document is paid to the Railroad Company by Headquarters Right-of-Way after receipt of an IRS W-9 form, which documents the tax identification number of the Railroad Company, and a copy of a signed easement document provided by the Utility/Railroad Engineer. The Utility/Railroad Engineer maintains copies of current IRS W-9 forms for Railroad Companies operating within Idaho.

**425.05 Recording of Easement Documents.** Permanent easements for the State Highway System are recorded at the appropriate county courthouse. Permanent easements for an LPA are, as a courtesy and with the consent of the LPA, recorded at the appropriate county courthouse.

The procedure for recording a document at a county courthouse is:

1. The document signatures are notarized.
2. Original document with referenced attachments or exhibits are sent to Headquarters Right-of-Way by the Utility/Railroad Engineer with a request of be recorded.
3. Headquarters Right-of-Way sends original document with referenced attachments or exhibits to the appropriate County Recorder.
4. County Recorder records document and then returns original recorded document with referenced attachments or exhibits to Headquarters Right-of-Way who returns them to the Utility/Railroad Engineer.

Permanent and temporary easement information is recorded by the Utility/Railroad Engineer into the Utility/Railroad Agreement Tracking System. Headquarters Right-of-Way records permanent easement information into the Real Property Management System.

## SECTION 430.00—RAILROAD LEASES

A railroad lease is similar to a railroad permanent easement except that instead of a one time payment, reoccurring annual payments are established. Lease payments are encouraged by ITD to be combined into one payment for multiple years, like 10 to 25 years, to reduce billing and payment expenses. Leases are not usually recorded at the county courthouse because they are renewed annually in accordance with the terms of the lease even when advanced payments are made.

The procedure for obtaining a lease is:

1. Define lease area.
2. Prepare lease document.
3. Determine and negotiate payment amount for lease area including fees, property values, document preparation, or other costs.
4. Execute lease document.
5. Make payment for lease area.

See [Section 425.00](#) for information on steps 1 through 4 of the lease process.

Step 5 of payment for lease area is the responsibility of the District, usually Right-of-Way, for the initial and continual payments of a lease.

Lease information is recorded by the Utility/Railroad Engineer into the Utility/Railroad Agreement Tracking System.

## SECTION 435.00—RAILROAD ABANDONMENT PROCESS

When a Railroad Company intends to abandon and discontinue service over a portion of its railroad system, it files the following documents with the federal Surface Transportation Board (STB), with copies to the Governor of Idaho, ITD's State Rail Planner, and affected railroad shippers.

- For inactive lines of the railroad system with little or no traffic, it files a Notice of Intent and environmental document.
- For active lines of its railroad system, it files a Notice of Intent, abandonment application, and environmental document.

ITD's State Rail Planner, coordinates ITD's response to the STB and/or IPUC with ITD's Rail-Highway Safety Coordinator, and the appropriate ITD District personnel (Planner, District Engineer, Right-of-Way, etc.); keeps ITD Executive Management apprised; and provides the Idaho Transportation Board with information as requested.

ITD's State Rail Planner and ITD's Rail-Highway Safety Coordinator verify that LPAs, as shown in the railroad's application, are aware of the proposed railroad abandonment.

The IPUC intervenes in abandonment proceedings when necessary to protect Idaho's interest. The IPUC is required by Idaho Code 62-424 to determine if the abandonment:

- Would adversely affect the area then being served.
- Whether there is reason to believe that the closure would impair the access of Idaho communities to vital goods and services and market access to those communities.
- Whether the line has a potential for profitability.

If the IPUC finds that the foregoing criteria have been met, then it may transmit a report of its findings to the STB.

The STB has the authority to deny or accept the Railroad Company's request for abandonment after holding a public comment period, reviewing the evidence submitted by the Railroad Company, and considering objections to the abandonment. ITD's State Rail Planner receives a copy of the STB's decisions and distributes it within ITD.

If the STB accepts the Railroad Company's request for abandonment, then appropriate District personnel (Planner, District Engineer, Design, Right-of-Way, etc.) in cooperation with Utility/Railroad Engineer and Headquarters Right-of-Way determine any interest in acquiring railroad property rights from the Railroad Company. These interests generally focus on upgrading property rights for existing easements by trying to obtain title to the property and obtaining additional railroad property rights for future transportation improvement projects.

After the abandonment process is completed and railroad service has ceased, the following is done:

- Rail-Highway Safety Coordinator revises the Railroad Grade Crossing Inventory
- Utility/Railroad Engineer revises the Utility/Railroad Agreement Tracking System
- Headquarters Right-of-Way revises the easement information of the Real Property Management System.

## **SECTION 440.00—CLOSING OR MODIFYING A RAILROAD AT-GRADE CROSSING**

Idaho Code Title 62 Chapter 3 allocates to ITD and LPA the authority to negotiate and enter into agreements with Railroad Companies to provide for the elimination of, or alteration to, railroad at-grade crossings, including the prorating of cost between ITD or LPA and the Railroad Company. These prorated costs include changes to roadways or railroad tracks made necessary by the elimination or alteration of the existing crossing and the acquisition of any required right of way. If an acceptable agreement cannot be reached between ITD or the LPA and the Railroad Company, a written complaint may be sent to the IPUC who, in accordance with Idaho Code 62-305, makes a determination on the issue.

When public objections are received regarding the closing of a railroad at-grade crossing, the road jurisdictional entity of ITD or the LPA petition IPUC for a railroad crossing closure order. ITD's Rail-Highway Safety Coordinator coordinates ITD's response to the IPUC with ITD's State Rail Planner and appropriate ITD District personnel. IPUC has the authority to authorize the closing of a railroad at-grade crossing after holding a public hearing and considering objections to the closure. ITD's Rail-Highway Safety Coordinator receives a copy of the IPUC's decision.

After a railroad crossing is closed:

- Rail-Highway Safety Coordinator revises the Railroad Grade Crossing Inventory
- Utility/Railroad Engineer revises the Utility/Railroad Agreement Tracking System
- Headquarters Right-of-Way revises the easement information of the Real Property Management System.

## **SECTION 445.00—RELINQUISHING EXISTING RAILROAD PROPERTY RIGHTS**

Railroad property rights may be relinquished by either of the signing parties, including, but not limited to the following reasons:

- Noncompliance with the terms of a document or agreement.



- ITD may choose to relinquish railroad property rights because of a road relocation that eliminates previous encroachments.
- A railroad crossing may be closed and the crossing road removed from railroad property.
- A portion of a road route may be removed from the State Highway System and transferred to an LPA.

Railroad property rights can be relinquished by:

- Permits and temporary easements can either be allowed to expire or be terminated by another agreement between ITD or the LPA and the Railroad Company.
- Permanent easements may be relinquished by either enacting a termination clause/term of the easement or be terminated by another agreement between ITD or the LPA and the Railroad Company.
- For a number of reasons Leases are generally relinquished by non-renewal, but may also be relinquished by enacting a termination clause/term of the lease.

The Utility/Railroad Engineer coordinates the relinquishment of easements or leases with Headquarters Right-of-Way, ITD's Rail-Highway Safety Coordinator, and the District. The Utility/Railroad Engineer revises the Utility/Railroad Agreement Tracking System and Headquarters Right-of-Way revises the easement information of the Real Property Management System.